

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

LISA C. NEAL, an individual,

Plaintiff,

v.

CITY OF BAINBRIDGE ISLAND,

Defendant.

No. 3:20-cv-06025-RSL

DEFENDANT CITY OF BAINBRIDGE
ISLAND'S MOTION FOR
PROTECTIVE ORDER STAYING
DISCOVERY PENDING RULING ON
MOTION TO DISMISS

NOTED FOR HEARING:
FRIDAY, MARCH 19, 2021

I. INTRODUCTION AND RELIEF REQUESTED

Pursuant to Fed. R. Civ.P. 26(c), Defendant City of Bainbridge requests the Court enter an order staying discovery until 30 days after the Court has ruled on the City's pending Motion to Dismiss. Dkt. 10. This stay would stay all pretrial discovery and delay the start of the 30-day time frame in which the City would otherwise have to respond to the discovery requests Plaintiff Lisa Neal served the City on March 8, 2021. *See Declaration of Jayne L. Freeman in Support of Motion for Protective Order*, Ex. A.

II. FACTS RELATED TO MOTION

Plaintiff filed this lawsuit in October of 2020, but she failed to serve the City with any pleadings until January 14, 2021. At that time, Plaintiff only served a copy of an

1 Amended Complaint [Dkt. 3]. *See* Dkt. 10. On March 4, 2021, the City filed a Motion to
2 Dismiss Plaintiff's claims. Dkt. 10.

3 On March 5, 2021, counsel for the parties conducted an FRCP 26 attorney
4 conference. *See Freeman Decl.* Counsel for the City proposed delaying discovery,
5 including Initial Disclosures, until the court rules on the City's Motion to Dismiss. *Id.*
6 Plaintiff requested the City continue its Motion approximately one month for various
7 reasons, including allowing Plaintiff to conduct discovery. *Id.* The City declined this
8 request. *Id.*

9 On March 8, 2021, Plaintiff served the City with discovery requests, with responses
10 would be due April 8, 2021. *Id.* Counsel for the parties conferred on March 11, 2021
11 regarding the City's request to stay discovery pending the court's ruling on its Motion to
12 Dismiss. *Id.*; *see also Declaration of Kari Lester in Support of Motion for Protective Order.*
13 The City now requests the Court stay discovery until a ruling is issued on its Motion to
14 Dismiss.

15 III. EVIDENCE RELIED ON

- 16 • Pleadings in Court file;
- 17 • Declaration of Jayne L. Freeman; and
- 18 • Declaration of Kari Lester.

19 IV. LEGAL AUTHORITY

20 A. The Court May Enter a Protective Order Staying Discovery Upon 21 Showing of Good Cause.

22 The Court has liberal discretion to issue a protective order to control the terms and
23 timing of pretrial discovery upon a motion for "for good cause" "to protect a party from
24 annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c);
25 *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34, 104 S. Ct. 2199, 2208, 81 L. Ed. 2d 17
26 (1984). The rule requires that "the movant has in good faith conferred or attempted to
27 confer with other affected parties in an effort to resolve the dispute without court action."

1 Fed. R. Civ. P. 26.

2 Rule 26 provides the Court wide latitude to fashion protective orders as appropriate
3 in light of the “competing needs and interest of parties affected by discovery.” *Rhinehart*,
4 467 U.S. at 36, 104 S. Ct. at 2209. Consistent with this rule, “[t]he District Court has broad
5 discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton*
6 *v. Jones*, 520 U.S. 681, 706, 117 S. Ct. 1636, 1650, 137 L. Ed. 2d 945 (1997). A protective
7 order staying discovery should further the “goal of efficiency for the courts and litigants.”
8 *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988).

9 Along this reasoning, a stay of discovery is appropriate where a ruling on a
10 dispositive motion would reduce the need for discovery. *Quezambra v. United Domestic*
11 *Workers of Am. AFSCME Local 3930*, 819CV00927JLSJEM, 2019 WL 8108745, at *2
12 (C.D. Cal. Nov. 14, 2019). This is the case when “(1) “the pending motion [is] potentially
13 dispositive of the entire case, or at least dispositive on the issue at which discovery is
14 aimed,” and (2) “the pending, potentially dispositive motion can be decided absent
15 additional discovery.” *Id.*; see also *Mlejnecky v. Olympus Imaging Am., Inc.*, 2:10-CV-
16 02630, 2011 WL 489743, at *5 (E.D. Cal. Feb. 7, 2011) (“A party may seek a protective
17 order that stays discovery pending resolution of a potentially dispositive motion such as a
18 motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).”) (citing *Wenger v.*
19 *Monroe*, 282 F.3d 1068, 1077 (9th Cir.2002))).

20 Here, Plaintiff submitted her first set of requests for production before the parties
21 have exchanged initial disclosures and while Defendant’s motion to dismiss is pending
22 before the Court. *Freeman Decl.* ¶¶ 4-7. Given the possibility that the Court’s ruling on the
23 motion to dismiss will reduce or eliminate the need for the City to respond to Plaintiff’s
24 extensive and broad discovery requests, there is good cause to stay discovery pending that
25 decision. Fed. R. Civ. P. 26(c). The City brings this motion after the parties conferred in
26 good faith regarding these issues on March 11, 2021. *Lester Decl.* ¶ 2.

1 **B. Resolution of the City's Pending Motion to Dismiss is Good Cause for**
 2 **Staying Discovery Until the Court Issues a Ruling.**

3 The Court should exercise its discretion here to stay discovery pending the
 4 disposition of the City's motion to dismiss. "The Ninth Circuit has held that discovery at
 5 the pleading stage is only appropriate where factual issues are raised by a Rule 12(b)
 6 motion, and a pending Rule 12(b) motion to dismiss is sufficient cause for granting a
 7 protective order." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011) (citing
 8 *Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 829 (9th Cir.2003), overruled on other grounds,
Odom v. Microsoft Corp., 486 F.3d 541, 551 (9th Cir.2007) (en banc)).

9 Because factual issues may not need to be addressed if the court grants the motion
 10 to dismiss, a "stay furthers the goal of efficiency for the court and litigants." *Little*, 863
 11 F.2d at 685. As the Ninth Circuit noted in *Rutman Wine v. E. & J. Gallo Winery*, 829 F.2d
 12 729 (9th Cir.1987), "[i]t is sounder practice to determine whether there is any reasonable
 13 likelihood that plaintiffs can construct a claim before forcing the parties to undergo the
 14 expense of discovery." *Id.* Further, there is good cause to grant a protective order staying
 15 discovery when the district court is "convinced that the plaintiff will be unable to state a
 16 claim for relief." *Wenger v. Monroe*, 282 F.3d 1068, 1077 (9th Cir. 2002), *as amended on*
 17 *denial of reh'g and reh'g en banc* (Apr. 17, 2002) (quoting *Wood v. McEwen*, 644 F.2d 797,
 18 801 (9th Cir.1981)).

19 As anticipated by Fed. R. Civ. P. 12(b), the City's motion turns on purely legal
 20 issues based on the allegations in Plaintiff's First Amended Complaint [Dkt. 3] and
 21 evidence cited and relied on therein. Unless and until the court determines that questions of
 22 fact preclude early dismissal of Plaintiff's lawsuit, or any alleged claims therein, it is a
 23 waste of resources to require the City to engage in any discovery—particularly the
 24 voluminous discovery promulgated here. *See, e.g., Jarvis v. Regan*, 833 F.2d 149, 155 (9th
 25 Cir. 1987) (finding that district court did not abuse discretion by staying discovery pending
 26 resolution of motion to dismiss because "[d]iscovery is only appropriate where there are
 27

1 factual issues raised by a Rule 12(b) motion”).

2 Plaintiff’s decision to issue discovery prior to even exchanging initial disclosures
3 further demonstrates good cause for a stay here. Just like Rule 12(b) motions, the purpose
4 of initial disclosures is to limit the scope discovery early on. *Medhekar v. U.S. Dist. Court*
5 *for the N. Dist. of California*, 99 F.3d 325, 327–28 (9th Cir. 1996) (“The drafters of Rule
6 26(a) intended these disclosures to serve as “the functional equivalent” to discovery, and to
7 eliminate the need for formal discovery at the early stages of litigation.” (citing 1993
8 Advisory Committee Notes to Fed.R.Civ.P. 26(a)(1))); *see also Estate of Lee v. California*
9 *Dep’t of Corr. & Rehab.*, 2:20-CV-1161-JAM-CKD, 2021 WL 490242, at *2 (E.D. Cal.
10 Jan. 14, 2021) (while motion to dismiss was pending, there was a strong justification for
11 stay of discovery prior to initial disclosures deadline).

12 **C. Staying Discovery Until the Court Either Dismisses Plaintiff’s Claims**
13 **or Rules that Factual or Legal Issues Preclude Early Dismissal Does**
not Prejudice Plaintiff.

14 Prior to issuing discovery requests, Plaintiff submitted a number of public records
15 requests to the City pursuant to RCW Ch. 42.56, Washington’s Public Records Act, and has
16 already obtained a vast number of documents and items (audio, etc.) through this process.
17 In many respects, the discovery requests are largely duplicative of these disclosures. To the
18 extent the requests differ, it appears Plaintiff is making discovery requests that are even
19 more broad and less likely to lead to discovery of evidence related to the claims in her
20 lawsuit. *See Freeman Decl.*, Ex. A. Plaintiff is not prejudiced by delaying discovery
21 regarding matters for which Plaintiff already possesses the relevant evidence, i.e. the
22 proceedings and documents upon which her First Amended Complaint is based. *Id.*; Dkt. 3,
23 Dkt. 10.

24 Though not asking the court to rule on potential objections in this motion, the City
25 anticipates raising objections to the scope of a number of the requests as overly broad,
26 unduly burdensome, outside the scope of allowable discovery under Fed. R. Civ. P. 26, and
27

1 not proportional to the needs of discovery as related to Plaintiff's claims. Delaying the start
2 of discovery until 30 days after the Court's ruling on the City's Motion to Dismiss will not
3 prejudice Plaintiff, as she intentionally waited three months to serve the City with any
4 pleadings after apparently filing a Complaint last year and has currently proposed a trial
5 date two years in the future, in Spring of 2023. *See Freeman Decl.*

6 **V. CONCLUSION**

7 Based on the foregoing, the City requests the court enter an order staying discovery
8 until 30 days after it rules on the City's Motion to Dismiss.

9 DATED: March 11, 2021

10 KEATING, BUCKLIN & McCORMACK, INC., P.S.

11 By: /s/ Jayne L. Freeman

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CERTIFICATE OF SERVICE

I hereby certify that on the below date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED: March 11, 2021

/s/ Jayne L. Freeman

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